# FILED

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EDMUND G. BROWN JR., Attorney General 1 **Board of Vocational Nursing** of the State of California and Psychiatric Technicians 2 ARTHUR D. TAGGART Supervising Deputy Attorney General 3 JEFFREY M. PHILLIPS, State Bar No. 154990 Deputy Attorney General 1300 I Street, Suite 125 P.O. Box 944255 Sacramento, CA 94244-2550 Telephone: (916) 327-5339 6 Facsimile: (916) 327-8643 7 Attorneys for Complainant 8 BEFORE THE BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS 9 DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA 10 11 In the Matter of the Accusation Against: Case No. VN-2006-1597 12 SEAN HENDER, a.k.a. SEAN ERIC HENDER ACCUSATION 6421 Pine Meadow Place 13 Anderson, CA 96007 14 Vocational Nurse License No. VN 208219 15 Respondent. 16 17 Complainant alleges: 18 **PARTIES** 19 1. Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") brings this 20 Accusation solely in her official capacity as the Executive Officer of the Board of Vocational 21 Nursing and Psychiatric Technicians ("Board"), Department of Consumer Affairs. 22 2. On or about February 26, 2004, the Board issued Vocational Nurse 23 License Number VN 208219 to Sean Hender, also known as Sean Eric Hender ("Respondent"). 24 Respondent's license will expire on June 30, 2009, unless renewed. 25 111 26 111 27 111 28

#### STATUTORY PROVISIONS

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2	3. Business and Professions Code ("Code") section 2875 provides, in
3	pertinent part, that the Board may discipline the holder of a vocational nurse license for any
1	reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice
5	Act.
5	4. Code section 118, subdivision (b), provides, in pertinent part, that the
7	expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary

- expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinar action during the period within which the license may be renewed, restored, reissued or reinstated. Under Code section 2892.1, the Board may renew an expired license at any time within four years after the expiration.
  - 5. Code section 2878 states, in pertinent part:

The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code § 2840, et seq.)] for any of the following:

(a) Unprofessional conduct. . .

. . .

- (f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction. . .
  - 6. Code section 2878.5 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter, it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist or podiatrist administer to himself or herself or furnish or administer to another, any controlled substance as defined in Division 10 of the Health and Safety Code, or any dangerous drug as defined in Section 4022 . . .

#### COST RECOVERY

7. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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#### CONTROLLED SUBSTANCES AT ISSUE

8. "Methadone" is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (c)(14).

#### FIRST CAUSE FOR DISCIPLINE

#### (Criminal Conviction)

9. Respondent is subject to disciplinary action pursuant to Code section 2878, subdivision (f), in that he was convicted of a crime which is substantially related to the qualifications, functions, and duties of a licensed vocational nurse, as follows: On or about October 19, 2007, in the criminal proceeding titled *People v. Sean Hender* (Super. Ct. Shasta County, Redding Branch, 2007, No. 07-04193), Respondent was convicted by a jury of one misdemeanor count in violation of Penal Code section 243, subdivision (e)(1) (battery on a spouse). The incident upon which the conviction is based occurred on approximately February 5, 2007.

#### SECOND CAUSE FOR DISCIPLINE

#### (Self-Administration of a Controlled Substance)

2878, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2878.5, subdivision (a). In or about and between 2005 and 2007, Respondent self-administered the controlled substance Methadone without lawful authority therefore, evidenced as follows: On February 6, 2007, while Respondent was being questioned by Shasta County Sheriff's Deputy M. Wallace about assaulting his wife on or about February 5, 2007, Respondent stated that he had been using his wife's Methadone to treat a back injury from a car accident in 2005, that he started using one pill per day and quickly escalated to using many 10 milligram pills per day, that he kept using the medication due to the pain relief and pleasure it gave him, that he was unable to obtain his own prescription for Methadone because it was not a medication prescribed by the VA, and that he had become hooked on pain medications while serving in the U.S. Army in Iraq.

#### MATTERS IN AGGRAVATION

11. On May 4, 2004, a written complaint was filed with the Board alleging that Respondent had smoked marijuana in a patient's home while on duty as a home health nurse. On or about February 24, 2006, following its investigation, the Board sent a letter to Respondent. Respondent was informed that the Board would not pursue disciplinary action against his license at that time; however, he was advised that future substantiated reports that he had engaged in similar behavior or otherwise violated the laws or regulations governing his practice as a licensed vocational nurse could result in disciplinary action against his license.

#### PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians issue a decision:

- Revoking or suspending Vocational Nurse License Number VN 208219, issued to Sean Hender, also known as Sean Eric Hender;
- 2. Ordering Sean Hender, also known as Sean Eric Hender, to pay the Board of Vocational Nursing and Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
  - Taking such other and further action as deemed necessary and proper.

DATED: June 26, 2008.

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SA2008100464 clp; 4/22/08 10438634.wpd TERESA BELLO-JONES, J.D., M.S.N., R.N.

Executive Officer

Board of Vocational Nursing and Psychiatric Technicians

Department of Consumer Affairs

State of California

Complainant

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